

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC.  
SECURITIES, DERIVATIVE AND ERISA  
LITIGATION

No. 08-md-1919 MJP

Lead Case No. C07-1874MJP

THIS DOCUMENT RELATES TO:  
  
ALL ACTIONS

ORDER APPOINTING LEAD  
COUNSEL IN THE  
CONSOLIDATED ERISA  
ACTIONS

This matter comes before the Court on two motions for appointment of interim lead counsel in the consolidated Washington Mutual ERISA actions. A single motion has been filed by Plaintiffs Bushansky, Alexander, Bussey, Ware, McDonald and Marra requesting appointment of Hagens Berman Sobol Shapiro LLP and Keller Rohrback LLP as Interim Co-Lead Counsel. (C07-1874, Dkt. No. 24.) Plaintiffs Mitchell and Roseblatt bring a separate motion requesting the appointment of Harwood Feffer LLP as Interim Lead Counsel and Badgley-Mullins as Interim Liaison Counsel. (C07-1874, Dkt. No. 27.) Having reviewed the motions, the supplemental briefing requested by the Court in its May 7, 2008 Order (C07-1874, Dkt. Nos. 45 & 47), and all papers submitted in support thereof, the Court hereby appoints Hagens Berman Sobol Shapiro LLP and Keller Rohrback LLP as Interim Co-Lead Counsel.

**Discussion**

“If more than one adequate applicant seeks appointment [as class counsel], the court must appoint the applicant best able to represent the interests of the class.” Fed. R. Civ. P. 23(g)(2). For this determination, the Court must consider counsel’s: (1) efforts in identifying and investigating claims; (2) experience; (3) knowledge of the applicable law; and (4) resources. Fed.

1 R. Civ. P. 23(g)(1)(A).

2 The filed complaints reflect that all counsel have adequately identified and begun  
3 investigating the plaintiffs' ERISA claims. The Court also finds that all counsel applying for the  
4 position of interim lead counsel have extensive relevant experience and knowledge of the  
5 applicable law. In their supplemental briefing, counsel identified the Judges each has recently  
6 appeared before in the course of similar litigation. The Court contacted those Judges and  
7 received excellent reports on every attorney's performance.

8 The Court is most familiar with the attorneys located in Seattle and has had multiple  
9 occasions over multiple years to assess the work of attorneys for Hagens Berman and Keller  
10 Rohrback. The Court acknowledges that participation in complex litigation with a large number  
11 of class members presents a substantial financial risk to the representing attorneys. With their  
12 combined resources, Hagens Berman and Keller Rohrback can effectively share that risk. The  
13 Court also finds that the two firms can adequately provide the staffing that will be required to  
14 prepare for and litigate this action. The Court finds that the law firms of Hagens Berman and  
15 Keller Rohrback will fairly and adequately represent the interests of the proposed class and hereby  
16 appoints the firms as Interim Co-Lead Counsel in this action pursuant to Fed. R. Civ. P. 23(g).

17 Interim Co-Lead Counsel shall have authority over the following matters on behalf of all  
18 plaintiffs in the WaMu ERISA cases:

- 19 1. convening meetings of counsel;
- 20 2. initiating, responding to, scheduling, briefing, and arguing all motions;
- 21 3. determining the scope, order, and conduct of all discovery proceedings;
- 22 4. assigning such work assignments to other counsel as they deem appropriate;
- 23 5. retaining experts;
- 24 6. designating which attorneys may appear at hearings and conferences with the Court;
- 25 7. conducting settlement negotiations with Defendants; and
- 26 8. all other matters concerning the prosecution or resolution of the ERISA cases.

1 Interim Co-Lead Counsel shall have the authority to communicate with Defendants'  
2 counsel and the Court on behalf of the plaintiffs and the proposed Class. Defendants' counsel  
3 may rely on all agreements made with Interim Co-Lead Counsel, and such agreements shall be  
4 binding.

5 By May 27, 2008, the Interim Co-Lead Counsel shall submit a preliminary report  
6 containing information requested in the Court's April 18, 2008 Order. (08-md-1919, Dkt. Nos.  
7 10 & 27.) That report shall also include:

- 8 1. the date by which Plaintiffs will file a Consolidated Complaint;
- 9 2. the date by which Defendants will answer or otherwise respond to the Consolidated  
10 Complaint; and
- 11 3. The date by which Plaintiffs will move for Class certification.

12 **Conclusion**

13 The Court appoints Hagens Berman Sobol Shapiro LLP and Keller Rohrback LLP as  
14 Interim Co-Lead Counsel for the consolidated Washington Mutual ERISA actions. Interim Co-  
15 Lead Counsel are directed to submit their preliminary report by May 27, 2008.

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17 The Clerk is directed to send a copy of this order to all counsel of record.

18 Dated: May 20, 2008.

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21 Marsha J. Pechman

22 U.S. District Judge  
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